

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 05/13/2015

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM: Leah Tommela

CASE NO: **56-2014-00461060-CU-NP-VTA**

CASE TITLE: **P.Q.L Inc vs Revolution Lighting Technologies Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Demurrer (CLM) to Cross Complaint

MOVING PARTY: Andy Sreden, P.Q.L Inc

CAUSAL DOCUMENT/DATE FILED: Demurrer to Cross Complaint, 03/12/2015

EVENT TYPE: Motion to Strike Punitive and Exemplary Damages

MOVING PARTY: Andy Sreden, P.Q.L Inc

CAUSAL DOCUMENT/DATE FILED: Motion to Strike Punitive and Exemplary damages and certain other allegations from cross complaint, 03/12/2015

APPEARANCES

Nicholas Kanter, counsel, present for Defendant(s).

Blake Delgado, self represented Defendant, present.

Jordan Kotero, self represented Defendant, present.

H. Steven Schiffres, counsel, present for Defendant, Cross - Complainant(s) telephonically.

T Randolph Catanese, counsel, present for Cross - Defendant, Plaintiff(s).

At 09:10 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Matter submitted to the Court with argument.

All submit on the Court's tentative ruling.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

The court's ruling is as follows:

Sustain the Demurrer regarding the cross-complaint filed by Gene Scott Fein as to the First, Third, and Fourth causes of action with 20 days leave to amend.

Overrule the Demurrer as to the Second cause of action.

Order the Motion to Strike off calendar as moot in light of the above rulings.

Discussion:

First and Third causes of action - fraud

Both the first and third cause of action are based on the allegation of fraud. The elements of fraud are "(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage." (citation) (Behnke v. State Farm General Ins. Co. (2011) 196 Cal.App.4th 1443, 1452-53.) Fraud must be pleaded specifically. To survive demurrer, plaintiff must plead facts that "show how, when, where, to whom, and by what means the representations were tendered." (Hamilton v. Greenwich Investors XXVI, LLC (2011) 195 CA4th 1602, 1614.)

The Cross-Complaint fails to identify the actual representation made to cross-complainant Fein (i.e., exactly what was said), allege specifically who made that representation, allege when it was made, where it was made, and how it was made (what means; orally, email, etc.). The Cross-Complainant says that PQL and Sreden implied from their conduct that it was their intention to sell the company, but there is no allegation regarding any of the details of that representation. The fraud alleged here is not pled with the required specificity and therefore the Demurrer is sustained as to both causes of action.

Fourth cause of action – usury

The essential elements of usury are: (1) The transaction must be a loan or forbearance; (2) the interest to be paid must exceed the statutory maximum; (3) the loan and interest must be absolutely repayable by the borrower; and (4) the lender must have a willful intent to enter into a usurious transaction. (Ghirardo v. Antonioli (1994) 8 Cal.4th 791, 798.)

Fein has not alleged that Sreden had any willful intent to enter into a usurious transaction. As to the issue of intent, cross-defendants are correct that there is no allegation of intent and therefore the Demurrer to this cause of action is sustained with leave to amend.

Motion to Strike:

Given the Court's tentative ruling on the Demurrers, the Motion to Strike is moot and should be taken off-calendar. In any event, the allegations, related to fraud are not properly pled and, accordingly, cannot support punitive damages (i.e., ¶¶20, 28, and Prayer 1(b) and 3(b)). Civil Code §3294(a) permits punitive damages where the defendant is guilty of "oppression, fraud, or malice." Those paragraphs should be stricken. As to ¶47, related to the 7th cause of action, there is an adequately pled violation of Labor Code §206.5 but there are no allegations supporting oppression, fraud, or malice. ¶47 should be stricken as well. None of the allegations support the claims for punitive damages.

Parties waive notice.